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THE COURT OF CLAIMS: ITS DEVELOPMENT AND PRESENT ROLE IN THE UNIFIED COURT SYSTEM

JOHN J. McNAMARA, JR.†

THE New York State Court of Claims is a constitutional court of record, having exclusive jurisdiction of claims against the State of New York and certain public authorities. It may also determine claims by the state against a claimant or between conflicting claimants, as the legislature may provide. The Court, with its complement of fourteen Judges appointed by the governor for nine-year terms, is part of the unified court system, under the supervision of the Judicial Conference of the State of New York. For administrative purposes, it is supervised by the Supreme Court, Appellate Division, Third Department. The primary power of the Court is to grant judgments for money damages against the State of New York and certain public authorities. The only equitable power possessed by the Court is that incidental to its primary power to render a money judgment.

Our purpose herein is to consider the development of the New York Court of Claims, its jurisdiction, function

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* The opinions expressed in this article are the personal views of the author and do not necessarily reflect the official position of the New York State Court of Claims nor any of the Judges thereof.
1 N.Y. Const. art. VI, § 9; N.Y. Pub. Auth. Law §§ 163-a, 212-a, 358, 469-a, 1607.
2 N.Y. Const. art. VI, § 28; N.Y. Judiciary Law § 214.
and operation, and the role it presently plays as part of the unified court system of the State of New York. In pursuit of this purpose, we shall review such of the history and background of the Court as is necessary for an understanding of how the Court came to be and why it exists. We shall then give consideration to the jurisdiction of the Court and its related problems, followed by a discussion of the principal types of actions brought in the Court of Claims. After an assessment of the effect that rulings in Court of Claims' cases have had on the general substantive law of the state, we will conclude with a discussion of the actual operation of the Court.

Before reviewing the historic development of the Court, it is best to give some consideration to the nature of the defendant in a Court of Claims action, for the nature of this defendant has exerted the greatest causal influence upon the practice and general operation of the Court. The Court was created for, and exists for, the purpose of adjudicating claims against the sovereign State of New York, which is the only real defendant in the Court of Claims. The sovereign is a unique type of defendant. Its activities reach into every one of the sixty-two counties and affect every individual citizen therein. The state performs services for the citizen which no private person, individual or corporate, could or would undertake: it operates a statewide police force, and maintains its own army and navy; it constructs a vast network of high-speed roads; it maintains a system of custodial institutions for the mentally ill, the retarded, the wayward and the criminal; it engages in a large recreational program which includes

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numerous public parks, campsites, ski trails, and other leisure facilities; it collects taxes, enforces statutes, and performs a host of other governmental functions peculiar to a sovereign. It is only natural that, in the course of such activities, the acts of the sovereign will, at times, come in conflict with the rights of the individual citizen. In some areas it is proper and necessary that the rights of the sovereign be superior to those of the individual. Conversely, there are those areas in which it is equitable that the individual have redress against the sovereign for violation of his rights. Although the truth of this doctrine is universally recognized, it has been only in recent years that practical steps have been taken in many jurisdictions to enable the citizen to assert his individual rights against the sovereign, particularly in the field of tort.

The paramount bar to an action at law by an individual against the sovereign is the ancient doctrine of sovereign immunity, i.e., the sovereign cannot be sued in its own courts without its consent. This theory, based upon the medieval concept that the king can do no wrong, has retained its vitality in many jurisdictions in this country.\(^5\) In these states, therefore, as a condition precedent to an individual suit, there must be a consent by the sovereign—a voluntary waiver of its historic immunity from liability. The sole exception seems to be in the field of eminent domain, where the right of an individual to compensation for private property taken for public use is constitutionally guaranteed.\(^6\) In jurisdictions where the sovereign is immune from suit, the only recourse available to the individual with a private

\(^6\) U.S. Const. amend. XIV; N.Y. Const. art. I, § 7. The express provision against taking private property for public use without just compensation was not in the New York State Constitution prior to 1821. The right to take private property for public use is an inherent sovereign power and is not dependent upon constitutional enactment. However, such right in any free government is dependent upon adequate compensation for the owner whose property is taken. People ex rel. New York Cent. & Hudson River R.R. v. Priest, 206 N.Y. 274, 99 N.E. 547 (1912). See also Kahlen v. State, 223 N.Y. 383, 119 N.E. 883 (1918); Rexford v. Knight, 11 N.Y. 308 (1854); Gardner v. Trustees of Village of Newburgh, 2 Johns. Ch. R. 162 (N.Y. 1816).
claim is to petition the legislature for relief, and to rely on the sense of justice of that body.⁷

In 1929, the State of New York abandoned the concept of sovereign immunity and assumed liability for the torts of state officers and employees.⁸ Jurisdiction was conferred on the Court of Claims to hear and determine all claims against the state for property damage and personal injury resulting from the misfeasance or negligence of these officers or employees while acting within the scope of their duties. This assumption of liability did not spring complete and Minerva-like from the mind of a Jovian legislature, but actually was the culmination of a gradual process of removing the armor of immunity which had begun over one hundred years previously.⁹

**EVOLUTION OF THE COURT**

As part of the Erie Canal Act of 1817, the legislature directed the State Canal Commissioners to petition the supreme court for the appointment of disinterested appraisers to assess damages to the lands of private parties resulting from canal construction. The Canal Commissioners were to pay the damages so assessed, and title in fee to the land so appropriated was to vest in the people of the state. This was the first general statute providing for the hearing and determination of private claims against the State of New York.¹⁰ In 1821, the law was amended to eliminate the disinterested appraisers and the duty of appraising property taken for canal purposes was assigned to the Canal Commissioners.¹¹ Subsequently, further legislation provided that the governor appoint two freeholders to work in concert with any one Canal Commissioner.

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⁷ People ex rel. Swift v. Luce, 204 N.Y. 478, 483, 97 N.E. 850, 851 (1912).
⁸ Laws of New York, 1929, ch. 467.
⁹ For a complete history of the Court of Claims and the procedures followed in maintaining claims against the State of New York, see generally Davidson, Claims Against the State of New York (1954); Breuer, The New York State Court of Claims, Its History, Jurisdiction and Reports (1959).
¹⁰ Laws of New York, 1817, ch. 262.
¹¹ Laws of New York, 1821, ch. 36.
in the assessment of appropriated land. The act also provided for a method of appeal to the Canal Board.\textsuperscript{12}

Legislation in 1830 provided that damages resulting from the flooding of private lands by reason of the erection of dams on rivers and streams for canal purposes be subject to appraisal by Canal Commissioners.\textsuperscript{13} This provision, recognizing damage of a tortious nature, was judicially construed to apply only to permanent, and not transient, damage to property.\textsuperscript{14} State liability was later extended to include damages occurring to private property as a result of the temporary occupation thereof or entry thereon to obtain materials for canal purposes.\textsuperscript{16}

In 1870, jurisdiction was conferred upon the Board of Canal Appraisers to hear and determine private claims for damages arising from the use and management of the canals, or from the negligence of any officer of the state having charge of the canals, or from any accident connected with the canals.\textsuperscript{16} The Board was authorized to prescribe the form of a claim, adopt rules of evidence, subpoena witnesses, and issue commissions for taking testimony out of the state.

Despite the partial waiver of immunity with respect to canal claims, the legislature continued to pass upon most private claims directly, by means of appropriations. There were many dangers inherent in such a system and thus, in 1874 the state constitution was amended to prohibit the legislature from auditing or allowing private claims against the state.\textsuperscript{17} The legislative power to appropriate money to pay claims which were audited and allowed according to law was continued. The amendment also forbade the audit, allowance or payment of claims which as between individuals would be barred by a lapse of time.\textsuperscript{18}

\textsuperscript{12} Laws of New York, 1825, ch. 275.
\textsuperscript{13} Laws of New York, 1830, ch. 293.
\textsuperscript{14} Heacock & Berry v. State, 105 N.Y. 246, 11 N.E. 638 (1887).
\textsuperscript{15} Laws of New York, 1836, ch. 287.
\textsuperscript{16} Laws of New York, 1870, ch. 321.
\textsuperscript{17} N.Y. Const. art. III, § 19.
\textsuperscript{18} The amendment was intended to prevent the revival of stale claims by the legislature. It prohibited the legislature from subjecting the state to a less favorable limitation than the citizen, but left untouched the
In 1876, the legislature created the State Board of Audit, composed of the Comptroller, the Secretary of State, and the Treasurer, to hear private claims against the state which were not heard by the Canal Appraisers. The creation of this Board afforded a forum for the litigation of contract claims against the state, but it did not constitute a waiver of sovereign immunity in tort actions. It was required that the Attorney General attend all sessions of the Board to protect the interests of the state. The Board was endowed with rule-making power with respect to the procedure before its monthly sessions, and the concurrence of two members was required for decision in all claims. Access to the Board of Audit in such actions was usually had by virtue of an enabling act conferring jurisdiction on the Board to hear and determine a private claim. In 1881, provision was made for appeal to the general term of the supreme court from decisions of the Board of Audit.

Two years later, the Board of Canal Appraisers and the State Board of Audit were abolished and jurisdiction of claims against the State of New York was conferred upon a newly established Board of Claims whose creation did not in itself constitute a waiver of immunity in tort cases.

The Board of Claims Act of 1883 established a two-year limitation for the filing of claims and also provided for the filing of counterclaims by the state. All the procedural power to make the limitations equal. See Homer Eng'r Co. v. State, 12 N.Y.2d 508, 191 N.E.2d 455, 240 N.Y.S.2d 973 (1963); Coish v. State, 23 Misc. 2d 117, 203 N.Y.S.2d 748 (Ct. Cl. 1960). See also 1936 N.Y. Leg. Doc. No. 65, N.Y. LAW REVISION COMM'N REP. (Q) 975-91. In Oswego & Syracuse R.R. v. State, 226 N.Y. 351, 124 N.E. 8 (1919), the Court of Appeals held that a cause of action was not barred by lapse of time as between citizens of the state unless there existed a tribunal of competent jurisdiction to which they might repair.

19 Laws of New York, 1876, ch. 444.
20 Danolds v. State, 89 N.Y. 36, 51 (1882). Prior to the creation of the Board of Audit, an individual who had a just claim against the state for breach of contract could not enforce it legally for want of a legal forum. His only recourse was to petition the legislature. Lord v. Thomas, 64 N.Y. 107, 109 (1876).
21 Lewis v. State, 96 N.Y. 71 (1884).
22 Laws of New York, 1881, ch. 211.
23 Laws of New York, 1883, ch. 205.
24 Lewis v. State, supra note 21.
powers of the Board of Audit and the Board of Canal Appraisers were granted to the new Board. Claims were to be determined by any two of the three commissioners, and awards were to contain the name of the claimant, the attorneys, and (in appropriation cases) a description of the land by metes and bounds. The awards were to be recorded in detail by the Clerk of the Court; those in favor of the state were conclusive. Where the amount in controversy exceeded five hundred dollars, appeal might be taken directly to the Court of Appeals.\textsuperscript{25}

The following year, observation of the prevailing rules of evidence was mandated by legislative enactment, and practice before the Board of Claims was required to conform as nearly as possible to that in the Supreme Court of New York State. The records of the Board, when certified under seal by the Clerk, were entitled to be read in evidence in any court.\textsuperscript{26} Four years later, the Board was authorized to allow the amendment of claims and the filing of supplemental claims. It was also provided that it might reopen hearings for further proof, take more extensive testimony, and direct the rehearing of claims. The marshals of the Board were empowered to execute its process in the same manner as a sheriff. Pursuant to the new amendment, the Attorney General was not required to answer a claim unless he filed a counterclaim (a procedural provision continued in the rules of the present Court of Claims).\textsuperscript{27} Where a special defense was alleged, filing an answer became discretionary with the Attorney General.\textsuperscript{28} It is evident that by this time, the Board of Claims had gradually acquired many of the characteristics and powers of a court.

In 1897, the Code of Civil Procedure was amended, and the Board of Claims was made a court, endowed with the powers necessary to carry on its judicial functions.\textsuperscript{29}

\textsuperscript{25}Laws of New York, 1896, ch. 451, changed the manner of taking an appeal; thereafter, appeals in matters amounting to $500 or more were taken to the Appellate Division of the Supreme Court, Third Department.
\textsuperscript{26}Laws of New York, 1884, ch. 60.
\textsuperscript{27}N.Y. Cr. Cl. R. 13.
\textsuperscript{28}Laws of New York, 1888, ch. 365.
\textsuperscript{29}Laws of New York, 1897, ch. 35.
The commissioners then in office were named Judges of the Court of Claims. The powers of the Court were the same as those of the Board of Claims, but with one limitation—the Court was deprived of jurisdiction of a claim submitted by law to any other tribunal or officer for audit and determination. It was provided that where jurisdiction was conferred on the Court by special law, liability was not implied but was subject to a defense as if presented under a general law. Judgments were to be entered upon the decisions of the Court, and such judgments were res judicata. In addition to making rules to regulate practice, the Court could also vacate or modify judgments and grant new trials, but no costs, fees, or disbursements were to be taxed or allowed. Appeals from judgments or orders of the Court lay to the Appellate Division, Third Department.

Subsequent amendments to the Code of Civil Procedure provided for the allowance of interest on the judgments of the Court of Claims, set up procedures to be followed for the payment thereof by the State Comptroller, and granted the power to order interpleader, consolidate claims or bring in new parties. In 1906, Section 265 of the Code of Civil Procedure was amended to provide that, except as otherwise prescribed, Court of Claims practice should conform to that in the supreme court.

Two years later, the state waived a portion of its immunity, and jurisdiction was conferred on the Court to hear and determine claims of wrongful death caused by the alleged tortious conduct of the state. The jurisdiction of the Court was also expanded to include contract claims which were rejected by an officer or tribunal to whom they were submitted by law, and it was additionally provided that no award should be made on any claim against the

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30 Laws of New York, 1901, ch. 440.
31 Laws of New York, 1901, ch. 286. In 1905, an amendment to Section 264 of the Code of Civil Procedure required the consent of the Superintendent of Public Works for the compromise of canal claims. Also, the filing of a notice of intention within six months of the accrual of a claim was required as a condition precedent in all claims except those for the appropriation of property. This amendment also served to reduce the statute of limitations in claims other than appropriations from two years to six months. Laws of New York, 1905, ch. 370.
state except on such legal evidence as would establish liability against an individual or corporation in a court of law or equity. The same year provision was made for an examination before trial by the Attorney General of any claimant, and the Court was barred from hearing any claim which as between citizens of the state would be barred by a lapse of time. In 1910, former Section 176 of the New York Highway Law was amended to render the state liable for injuries resulting from a defect in a state or county highway during the time the highways were maintained by the state's patrol system.

The Court of Claims was abolished in the following year and was succeeded by the Board of Claims which consisted of three commissioners. The constitutionality of the act abolishing the Court of Claims was upheld by the Court of Appeals on the ground that, since the Court of Claims was not a court provided for in the state constitution, it was only an auditing board or quasi-judicial body. This holding was contrary to a previous statement by the same Court in Spencer v. State, wherein it had been recognized that the 1897 amendment to the Code of Civil Procedure had "reorganized the former Board of Claims into the Court of Claims and made the latter one of the regular and important judicial tribunals of the State."

The Board of Claims was abolished and the Court of Claims re-established in 1915. The Court was composed of three Judges who were required to be attorneys with a minimum of ten years experience. Claims could be heard

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32 Laws of New York, 1908, ch. 519.  
34 Laws of New York, 1911, ch. 856.  
35 People ex rel. Swift v. Luce, 204 N.Y. 478, 97 N.E. 850 (1912). The opinion herein contains an extended exposition of the early history of the Court of Claims.  
36 187 N.Y. 484, 80 N.E. 375 (1907).  
37 Id. at 486, 80 N.E. at 376.  
by one, two, or three Judges, but determinations required the concurrence of any two.

Between 1915 and 1920, several minor changes were made in the Code of Civil Procedure which affected the Court of Claims: at least two Judges were to devote their entire time to the determination of canal appropriation claims; the Attorney General was empowered to notice claims for trial by serving notice of trial, and to examine a claimant with respect to the title of property in appropriation cases; authority was granted to dismiss claims for lack of prosecution, and to restore them on good cause shown; it was required that a claim set forth items of damage, and the Court was authorized to join additional parties in appropriation claims where their appearance was necessary; the necessity of filing a notice of intention as a condition precedent to filing a claim was eliminated; and it was provided that appeals from claims arising within the fourth department be taken to that department.

The year 1920 saw the enactment of the Civil Practice Act, and, as part of this procedural reform, a separate Court of Claims Act was provided. This essentially was a re-enactment of the pertinent provisions of the former Code of Civil Procedure. In the same year, the Court of Appeals held in Smith v. State that despite the fact that Section 264 of the Code of Civil Procedure had conferred jurisdiction of the broadest character upon the Court of Claims, it nevertheless did not constitute a concession of liability on the part of the state or create a cause of action which did not previously exist. Therefore, the claimant, who had been injured when he tripped over a wire on the grounds

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42 Laws of New York, 1919, ch. 203.
43 Laws of New York, 1920, ch. 482.
44 Laws of New York, 1919, ch. 481.
45 The only significant change was a provision for the suspension of interest in appropriation claims when the claimant failed to file his claim within six months of accrual.
46 227 N.Y. 405, 125 N.E. 841 (1920).
of the state reservation at Niagara, could not enforce his claim against the state.

In 1928, Governor Smith vetoed a large group of private bills which would have enabled the Court of Claims to hear and determine actions based on tort. In his veto message, he recommended a general law granting access to the Court of Claims to all tort claimants. Up to this time, access to the Court for tort claims, except where immunity had been specifically waived, was by means of enabling act. The following year, the legislature heeded the recommendations of the Governor and enacted former Section 12(a) of the Court of Claims Act, waiving the historic immunity of the state in tort, and conferring jurisdiction upon the Court to hear and determine claims based upon the misfeasance or negligence of officers or employees of the state. The statute was a significant landmark, and represented the culmination of one hundred years of slow but steady progress. The scope of the Court's jurisdiction

47 "I have been studying claim bills of this kind for years. They constitute one of the greatest problems and most unnecessary burdens placed upon the Governor by the Legislature. The total amount involved in these claims is enormous. This year approximately sixty of these bills were left on the desk of the Governor when the Legislature adjourned. Almost all of them are obviously introduced by legislators who have no idea of the validity of the claims... I have now come to the conclusion that provision to meet claims of this kind should be made by amendment to the General Laws... There is no reason why access to the Court of Claims should be afforded only to a selected few people who have friends to draw special bills for them and who are able to obtain support in the Legislature to pass them. By disapproving these bills my chief purpose is to call attention to the need of the adoption of a new policy in the hope that the next Legislature will give serious attention to this matter and pass the necessary amendments to the General Laws so that this subject may be handled in the future in a logical, fair and orderly way, in place of the haphazard, careless and discriminating procedure which has obtained up to this time." PUBLIC PAPERS OF GOVERNOR ALFRED E. SMITH 200-02 (1928).

48 LAWS of New York, 1929, ch. 407. The new act created some procedural difficulty in that it required the service of a written claim or written notice of intention to file a claim upon the Attorney General and the Superintendent of Public Works within sixty days after the alleged injury occurred. In addition, when a notice was filed, it was necessary to file a claim within two years after the event which caused the injury. This conflicted with the existing six-month statute of limitations provided for in former Section 15 of the Court of Claims Act. See Diamond v. State, 147 Misc. 706, 264 N.Y. Supp. 573 (Ct. Cl. 1933). See also 1936 N.Y. LEG. DOC. No. 65, N.Y. LAW REVISION COMM'N REP. (Q) 983-91. This situation was rectified by enactment of LAWS of New York, 1936, ch. 775.
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was now practically complete with respect to actions against the State of New York.

The present Court of Claims Act, promulgated in 1939, was a clarification and rearrangement of the former statute. The Court was to be composed of five Judges, appointed for terms of nine years. Under new section 8, the state waived its immunity from liability and action and consented to have the same determined in accordance with the rules of law applied to actions between individuals or corporations in the supreme court. The new waiver was somewhat broader than its predecessor, in that the Court was given jurisdiction of public as well as private claims.

A subsequent amendment enabled the Court to hear claims based upon wrongful imprisonment where the claimant was pardoned by the Governor on the grounds of innocence. In 1953, the waiver of immunity was expanded to include torts of members of the organized militia and employees of the Division of Military Affairs, in the operation and maintenance of vehicles and aircraft utilized within the scope of their duties. Seven years later, the state became

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49 Laws of New York, 1939, ch. 860.
50 Village of Flower Hill v. State, 7 App. Div. 2d 940, 182 N.Y.S.2d 230 (3d Dep't 1959); Town of Vienna v. State, 203 Misc. 1053, 1059, 119 N.Y.S.2d 545, 551 (Ct. Cl. 1953). It had been formerly held in Board of Supervisors v. State, 153 N.Y. 279, 47 N.E. 288 (1897) that the Board of Claims did not have jurisdiction of public claims. See also cases cited in the Town of Vienna opinion.
51 Laws of New York, 1942, ch. 442. The section was amended by Laws of New York, 1946, ch. 10, to permit filing by persons convicted before April 13, 1942. However, no award has been made as yet by the Court of Claims in a claim filed pursuant to this act. Campbell v. State, 186 Misc. 586, 62 N.Y.S.2d 638 (Ct. Cl. 1946) in which an award was made for an erroneous conviction and imprisonment for forgery, was filed pursuant to a special enabling act (Laws of New York, 1946, ch. 1). In Hoffner v. State, 207 Misc. 1070, 142 N.Y.S.2d 630 (Ct. Cl. 1955), an award was made to the claimant, who was wrongfully convicted of murder and sentenced to life imprisonment. This statute was filed pursuant to Laws of New York, 1955, ch. 841. See also People v. Hoffner, 208 Misc. 117, 129 N.Y.S.2d 833 (Queens County Ct. 1952). In Butters v. State, 27 Misc. 2d 105, 213 N.Y.S.2d 781 (Ct. Cl. 1961), an award was made for an improper conviction, but claim was filed under an enabling act (Laws of New York, 1959, ch. 804). On the necessity of a pardon, see Roberts v. State, 160 N.Y. 217, 54 N.E. 678 (1899). See also People v. Larkman, 187 Misc. 135, 64 N.Y.S.2d 277 (Erie County Ct. 1946).
52 Laws of New York, 1953, ch. 343. In Newiadony v. State, 276 App. Div. 59, 93 N.Y.S.2d 24 (3d Dep't 1949), the appellate division held the state not liable in a collision involving the claimant and a National
susceptible to liability for torts arising out of the operation, maintenance and control of armories used by the militia.\footnote{53}\n
This extension of waiver was actually a codification of a rule enunciated in \textit{Strassman v. State}.\footnote{54}

The legislation having the greatest effect on the work of the Court of Claims since the waiver of immunity in 1929 is present Section 30 of the Highway Law.\footnote{55} This act transferred the duty of procuring rights of way for state highways from the Boards of Supervisors of the counties to the Department of Public Works. Thereafter, the state itself, through the Superintendent of Public Works, acquired all land for the construction and reconstruction of state highways by appropriation. The appropriation was effected by filing a map and a description of the property in the local county clerk’s office. The owners of the property had the right to file a claim for any damages in the Court of Claims, if they could not agree upon valuation with the Superintendent of Public Works.

As a result of the tremendous highway construction program of New York State, more than sixty per cent of the work of the Court now involves claims for the appropriation of such property. To handle this constantly expanding number of claims, the Court has been increased from five to fourteen Judges.\footnote{56}

\footnote{53} Laws of New York, 1960, ch. 214.
\footnote{55} Laws of New York, 1944, ch. 544.
\footnote{56} Laws of New York, 1946, ch. 335 (Judges increased to 6); Laws of New York, 1956, ch. 881 (Judges increased to 8); Laws of New York, 1961, ch. 862 (Judges increased to 10); Laws of New York, 1962, ch. 247 (Judges increased to 12); Laws of New York, 1965, ch. 404 (Judges increased to 14). Comparing the latest \textsc{Court of Claims Report} with the \textsc{TeTeenth Annual Report and Studies of the New York Judicial Council} shows the following differences for the period July 1, 1945 through June 30, 1946, as compared with the period July 1, 1964 through June 30, 1965:
The year 1950 saw the culmination of the development of the Court of Claims when, by vote of the people, the Court became a constitutional Court. There could no longer be any doubt that the Court of Claims had definitely become one of the “regular and important tribunals” of New York State.

**Scope of Jurisdiction**

The jurisdiction of the Court of Claims is wholly statutory. It is set forth in the New York Court of Claims Act, and in several appropriation statutes, and other legislative enactments which give the Court power to render money

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*Damages demanded in several claims appear exaggerated.

judgments for injuries resulting from various acts of the state. Jurisdiction has also been granted to the Court of Claims over certain public authorities.

N.Y. AGRIC. & MXTS. LAW § 27; N.Y. CANAL LAW § 40; N.Y. CONSERV. LAW §§ 1-0503, 676-a; N.Y. CORREC. LAW § 21; N.Y. EDUC. LAW § 307; N.Y. EXECUTIVE LAW § 213; N.Y. H'WAY LAW §§ 29, 30, 347; N.Y. MENTAL HYGIENE LAW § 46; N.Y. MIl. LAW § 177; N.Y. PUB. HEALTH LAW § 401; N.Y. SOC. WELFARE LAW § 40; N.Y. STATE LAW § 59-b (public defense); N.Y. UNCONSOL. LAWS § 8205 (McKinney 1928) (grade crossing elimination); N.Y. UNCONSOL. LAWS § 1307 (McKinney 1936) (flood control); N.Y. UNCONSOL. LAWS § 7702 (McKinney 1942) (property for conveyance to United States); in addition thereto, the following sections of the N.Y. PUB. AUTH. LAW provide for the acquisition of property for certain authorities by the Superintendent of Public Works: (Adirondack Mountain Authority) N.Y. PUB. AUTH. LAW § 106; (New York State Thruway Authority) N.Y. PUB. AUTH. LAW § 358; (East Hudson Parkway Authority) N.Y. PUB. AUTH. LAW § 457; (New York State Bridge Authority) N.Y. PUB. AUTH. LAW § 529; (Power Authority of the State of New York) N.Y. PUB. AUTH. LAW § 1007-b; (New York State Atomic Research and Development Authority) N.Y. PUB. AUTH. LAW § 1856.

N.Y. CANAL LAW § 85 (damage caused by termination of navigation on canal, or transfer of such canal to the United States); N.Y. CANAL LAW § 120 (damage caused by use or management of canal). However, the state is not liable for damages resulting from the navigation of canals. N.Y. CT. CL. ACT § 8 does not contravene this section. Penn No. 5, Inc. v. State, 205 Misc. 18, 126 N.Y.S.2d 659 (Ct. Cl. 1953). The statute also permits settlements not exceeding $500); N.Y. PUB. HEALTH LAW § 14 (an action against an officer or employee of the State Health Department acting in official capacity shall be brought and maintained in the Court of Claims as an action against the state); N.Y. CONSERV. LAW § 58 (damages to private land caused by agents of the Conservation Department establishing barrier zones for control of forest insects and forest tree diseases); N.Y. CONSERV. LAW § 437(14) (damages caused by entry during survey for water resources planning and development); N.Y. PUB. LANDS LAW § 6 (damages based on failure of title to land sold by state); N.Y. CORREC. LAW § 6-b (claim against Commissioner, Deputy Commissioner, officer or employee of state prison, reformatory or institution for criminally insane, when acting within scope of duties, shall be brought and maintained in the Court of Claims as action against the state); N.Y. MENTAL HYGIENE LAW § 44 (action against Commissioner, Deputy Commissioner, officer or employee of Mental Hygiene Department, while acting in scope of official duties, shall be brought as claim against the state in the Court of Claims); N.Y. CONSERV. LAW §§ 505, 507 (damages for cessation of water power); N.Y. CONSERV. LAW § 518 (revocation of water power license); N.Y. ABAND. PROP. LAW § 215 (claim for value of escheated lands); N.Y. MUN. LAW §§ 231-33 (claim by county for proceeds of railroad taxes); N.Y. UNCONSOL. LAWS § 9129 (McKinney 1951) (when Civil Defense takes private property for temporary or permanent use or for destruction the property owner can file a claim with Court of Claims. The Presiding Judge can refer the claim to an emergency referee, who shall have the same power as the Court). One statute, N.Y. STATE FIN. LAW § 46, precludes the Court of Claims from hearing the claim of a state employee for statutory pay increase.

Tort and contract claims: (Jones Beach Parkway Authority) N.Y. PUB. AUTH. LAW § 163-a; (New York State Thruway Authority) N.Y.
As we have already indicated, the legislature still can and does pass special statutes conferring jurisdiction upon the Court to enable it to hear a specific claim. The majority of these statutes are passed to overcome the failure of the claimant to comply with the filing requirements of the Court of Claims Act. Another type of enabling act is passed to recognize a moral obligation on the part of the state. Here, one of the functions of the Court of Claims is to determine whether

the particular claim belongs to a class concerning which the Legislature, in the exercise of a wide discretion, might reasonably say that they are founded in equity and justice and involve a moral obligation on the part of the State which it should satisfy. Otherwise, the enactment is an unconstitutional exercise of legislative power.

The development of the jurisdiction of the Court of Claims was concurrent with the retreat of the state from the doctrine of sovereign immunity and the growing recognition of the idea that a responsible sovereign should grant compensation to a citizen it has wronged. Although Section 8 of the New York Court of Claims Act is a broad waiver of immunity, it is vague and, in a certain sense, unrealistic, for it prescribes the same rule of law between the state and an individual as that applied between individuals or corporations in the supreme court. Since the sovereign engages in many functions which no individual or corporation undertakes, the Court of Claims plays the extremely difficult role of applying, in the first instance, these ordinary principles of common law to situations involving the diverse activities of the state.

PUB. AUTH. LAW § 361-b; (Bethpage Park Authority) N.Y. PUB. AUTH. LAW § 212-a; (East Hudson Parkway Authority) N.Y. PUB. AUTH. LAW § 469-a. Tort claims only: (Saratoga Springs Authority) N.Y. PUB. AUTH. LAW § 1607.

However, the legislature cannot subject the state to a longer statute of limitations than that existing for the same cause of action between private citizens. Homer Eng'r Co. v. State, 12 N.Y.2d 508, 191 N.E.2d 455, 240 N.Y.S.2d 973 (1963).


There are two facets to the problem to be determined by the Court. Since the State of New York delegates some of its governmental powers to its political subdivisions, and employs various agencies to perform certain of its functions, the Court, in many cases, is called upon to decide whether the State of New York is the actual defendant. The other facet of the problem is to determine the limit of the state's liability.

There are large areas of sovereign activity for which no liability accrues against the State or the officers of the State in the performance of official functions.... No government could function thus hedged in by lawsuits.... There are some public functions which by their nature could impose no liability even if all sovereign immunity were fully waived.64

In *Bernardine v. City of New York*,65 the Court of Appeals held that the waiver of immunity did not subject the state to liability for the wrongs of the officers or employees of its civil subdivisions.66 However, while the state may not be liable for the acts of a municipal subdivision under the theory of delegation of a governmental function, it may nevertheless be liable when it employs a municipality or other agency to perform some act, or where a local officer acts on behalf of the state.67 In such situations, the Court of Claims must determine whether the actual tort-feasor is in fact an agent of the state. Thus, in *Paige v. State*,68 where the claimant was committed to a privately-owned reformatory by a court of competent

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65 294 N.Y. 361, 62 N.E.2d 604 (1945).
66 In *Lee v. Village of Sandy Hill*, 40 N.Y. 442 (1869), municipal corporations were held liable in tort for governmental as well as proprietary functions. The Court of Appeals overruled this opinion in *Maxmilian v. The Mayor*, 62 N.Y. 160 (1875), holding that when a civil subdivision of the state performed a governmental function through one of its agents, such agent acted as a delegate of the state and not in behalf of the political subdivision. Hence there was no liability because of the immunity of the sovereign. The *Bernardine* case held that the waiver of immunity by the state put an end to this fictitious doctrine. See discussion in *Sofka v. State*, 202 Misc. 235, 115 N.Y.S.2d 421 (Ct. Cl. 1952).
68 269 N.Y. 352, 199 N.E. 617 (1936).
jurisdiction, the Court of Claims ruled that the negligence of those in charge of the institution was a tort of the officers and employees of the state. However, in an instance where the claimant was injured while enrolled in an educational institution operated by a local school board, but supported by federal funds paid through the state, the state was held not liable since it neither operated the course nor employed the school board to do so.\(^{69}\) A similar result was reached in \textit{Softka v. State}\(^{70}\), where the state was absolved of any responsibility for injuries received by the claimant in taking an agility test conducted by a municipal civil service commission. It has been held that a physician appointed by a Boxing Commission, a sheriff, and a district attorney are not employees of the state for whose acts the state may be responsible.\(^{71}\)

We have already touched on the relationship of public authorities to the state. The question of state responsibility for the acts of such authorities has come under the scrutiny of the courts, particularly the Court of Claims. The test of the liability of the state for the acts of such public agencies is usually whether the agency is a separate entity, corporate and politic, from the State of New York.\(^{72}\)

The question of the responsibility of the state for the acts of its judicial officers has also come before the Court of Claims. This is another field in which the state's waiver


\(^{70}\) \textit{Supra} note 66.

\(^{71}\) With respect to the status of a sheriff, see Commisso v. Meeker, 8 N.Y.2d 109, 168 N.E.2d 365, 202 N.Y.S.2d 287 (1960), holding that even the county is not liable in tort for the acts of the sheriff. See also, Fisher v. New York, 10 N.Y.2d 60, 176 N.E.2d 72, 217 N.Y.S.2d 52 (1961); Rosensweig v. New York, 5 N.Y.2d 404, 158 N.E.2d 229, 185 N.Y.S.2d 521 (1959), \textit{affirming} 5 App. Div. 2d 293, 171 N.Y.S.2d 912 (3d Dep't 1958), \textit{reversing} 208 Misc. 1065, 146 N.Y.S.2d 589 (Ct. Cl. 1955), wherein the state was held liable on the ground that the type of control exercised by the State Athletic Commission left no doubt that examining doctors were its servants.

of immunity has been held inapplicable, since a judicial officer is not an employee of the state in the sense that the doctrine of *respondeat superior* can be logically applied to his acts.\(^3\)

Another situation involving the limits of the state's liability is that of an act performed pursuant to legislative policy, chiefly where such policy has concerned the protection of certain wild animals. In *Barrett v. State*,\(^4\) it was held that the state was not liable for the flooding of the claimant's land as a result of beaver dams, constructed by beaver which were purchased, liberated and protected by the state in pursuance of a legislative policy to restore beaver to New York. The rationale of the *Barrett* case was followed in *Mann v. State*,\(^5\) and *Anthony v. State*,\(^6\) which involved collisions of vehicles with deer on a state highway, and in *Corron v. State*,\(^7\) which concerned damage to fruit trees by cottontail rabbits. However, in *Morrison v. State*,\(^8\) another deer-collision case, the Court held that the claim, alleging failure to erect and maintain signs warning of deer crossings, contained facts sufficient to state a cause of action, but the case was ultimately dismissed on the ground that the absence of signs was not a proximate cause.

It is generally held that the State of New York is not liable under the waiver of immunity for errors of

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\(^3\) Jameson v. State, 4 Misc. 2d 326, 158 N.Y.S.2d 496 (Ct. Cl. 1956), aff'd, 7 App. Div. 2d 944, 182 N.Y.S.2d 41 (3d Dep't 1959); Fishbein v. State, 204 Misc. 151, 120 N.Y.S.2d 92 (Ct. Cl.), aff'd, 282 App. Div. 600, 125 N.Y.S.2d 845 (3d Dep't 1953). In Waterman v. State, 19 App. Div. 2d 264, 241 N.Y.S.2d 314 (4th Dep't 1963), it was held that a court stenographer was not a judicial officer. In fact, the court stated that the responsibility of the state for his negligence, under the principle of *respondeat superior*, presented a question of fact.

\(^4\) 220 N.Y. 423, 116 N.E. 99 (1917).

\(^5\) 204 Misc. 241, 122 N.Y.S.2d 830 (Ct. Cl. 1950).

\(^6\) 170 Misc. 811, 10 N.Y.S.2d 560 (Ct. Cl. 1939).

\(^7\) 204 Misc. 222, 123 N.Y.S.2d 105 (Ct. Cl. 1952). The Court stated, by way of dicta, in *Morrison* that the erection or non-erection of a sign to warn of deer was something in the nature of a quasi-judicial determination. However, see Hicks v. State, 4 N.Y.2d 1, 148 N.E.2d 885, 171 N.Y.S.2d 827 (1958), where the Court of Appeals stated that there is, of course, no longer any question that the state is duty-bound to warn highway users of existing hazards.
judgment on the part of its officers. At times, the distinc-
tion between an error in judgment and common-law
negligence is a very fine one. In several instances it has
been held that the failure of the Commissioner of Motor
Vehicles to revoke a driver's license or a vehicle's registration
did not subject the state to liability for subsequent injuries
caused by the operation of such vehicle or the action of such
driver. As a practical matter, it is doubtful whether the
possession or non-possession of an operator's license or
certificate of registration could be said to have been the
proximate cause of the accident.

In Bertch v. State, the state was held not liable where
the Commissioner of Motor Vehicles erroneously suspended
the claimant's license. Similarly, in Haslam v. State, the
Court dismissed a claim based on the location of a
railroad warning signal, which had been placed pursuant
to the direction of the Public Service Commissioner. The
rationale in these cases was that the waiver of immunity
was never intended to redress individual wrongs which may
have resulted from the exercise of judgment and discretion
by a state official in the performance of his duty. But
where injury resulted from an abuse of discretion, admin-
istrative error or faulty interpretation of a statute, liability
has been found to exist.

There has been some criticism of the decisions in the
"error in judgment cases," particularly of the results in

Bertch and Haslam. However, the "error in judgment" type of claim involves certain complexities, and the initial consideration is one of proximate causation. The question of foreseeability must also be examined. Overriding all, of course, is the policy question: just what is the limit of the state's responsibility to the individual citizen; how great a burden can the state assume in protecting him?

The state's assumption of tort liability raised a question as to whether the state and its political subdivisions would now be liable for failure to enforce statutes and regulations, and to otherwise provide for public protection. The Court of Appeals provided a partial answer to this question in Steitz v. City of Beacon, holding that the duty of public protection was owed to the community in general, and that the failure to provide such protection did not create civil liability to individuals.

The same principle has prevailed in the inspection cases. For example, in Young v. State, claimant, employed under a city contract, fell from a scaffold which did not comply with the safety provisions of the labor law. He failed to prove that the state had any knowledge of the violation or that it existed when the premises were inspected.

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86 In Rowe v. State, supra note 82, the issuance of the license had no positive effect on the claimant's injury, since there was no proof that the licensee was not qualified to receive a license.


88 295 N.Y. 51, 64 N.E.2d 704 (1945).

89 The same problem was recognized earlier in Hughes v. State, 252 App. Div. 263, 299 N.Y. Supp. 387 (3d Dep't 1937), and decided in a similar manner. See also Miletis v. State, 204 Misc. 381, 123 N.Y.S.2d 586 (Ct. Cl. 1953), where the Court held that there was no duty on the part of the State Rent Administrator to bring an action on behalf of a tenant where the tenant elected not to institute an action.

He contended that the state was liable for its failure to supervise the work and to enforce the safety provisions. The Court of Claims held that neither the statute nor any principle of the common law had placed so onerous and general a burden upon the state.

In situations, however, where the state actually makes an inspection, and negligently fails to discover a violation, or neglects to have it corrected, there is liability. Thus, while the state may not be liable for its failure to enforce statutes generally, it is nevertheless guilty of common-law negligence when it fails to take action under conditions where it knew or should have known there was a violation of the law. In *Peterson v. State*, where the claimant's vehicle collided with a disabled vehicle parked on a state highway, the state was held liable, since the violation was known by the state police, who failed to remove the vehicle or to warn of its presence. In *Lehman v. State*, the state was absolved of liability where the claim was based on the state's failure to enclose or illuminate an area containing broken high-tension lines. There, however, the claim was dismissed because no act of the state was proven proximately causative of the death of the claimant's intestate.

The "error in judgment," inspection, enforcement, and protection claims all pose one common question, and that is the limit of state liability. Obviously the duty to enforce all laws, rules, and regulations, as well as to provide for the common defense and protection, is an onerous one. If the state were liable in money damages to each individual for each breach of such duty, the burden would be appalling. Hence, the courts have taken a pragmatic approach in deciding these types of claims—they have attempted to strike a balance between contending interests.

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Several cases have been brought in the Court of Claims based on the actions of state officers for which statutory review was provided by law. In this type of action, the claim is dismissed, and the claimant is directed to seek his statutory remedy, usually an Article 78 proceeding. For example, civil service matters involving appointment and discharge of state employees have been held to be the subject of Article 78 proceedings, rather than claims in the Court of Claims.

The Court has also considered the effect of the waiver of immunity where a claim is based on a statutory cause of action. Usually, general statutes in derogation of the sovereignty of the state are strictly construed and do not divest the state of its rights or interests, save by specific provision or unmistakable legislative intent to that effect. Thus, where an action based on breach of a statutory duty would lie between individuals, a claim against the state must be based on negligence. However, in appraising the negligence of the state, the standards it has created for others by its statutes and rules may be properly applied. In one case, the state was held liable for its negligence.

94 CPLR art. 78.
95 Burgos v. State, 40 Misc. 2d 971, 244 N.Y.S.2d 479 (Ct. Cl. 1963); Reiser v. State, 198 Misc. 647, 98 N.Y.S.2d 705 (Ct. Cl. 1950).
98 Gould v. State, 196 Misc. 488, 92 N.Y.S.2d 251 (Ct. Cl. 1949), wherein the state was held negligent in failing to supply goggles to an inmate of a state prison engaged in demolition work. Claimant had urged that the state was under a positive duty to furnish goggles pursuant to N.Y. Lab. Law § 241 and Rule 23-3.18 of the Rules Relating to the Protection of Persons Employed in the Erection, Repair and Demolition of Bldgs. or Structures, 3 N.Y. Official Compilation of Codes, Rules & Regulations 657 (1945). See Fitzgerald v. State, 28 Misc. 2d 283, 217 N.Y.S.2d 817 (Ct. Cl. 1961); Lee v. State, 187 Misc. 268, 64 N.Y.S.2d 417 (Ct. Cl. 1946); Beale v. State, 46 N.Y.S.2d 824 (Ct. Cl. 1944). See also Coleman v. State, 3 App. Div. 2d 802, 160 N.Y.S.2d 192 (3d Dep't 1957), where the appellate division found it unnecessary to pass on the question of whether the state was subject to the provisions of the labor law. In Moore v. State, 42 Misc. 2d 314, 248 N.Y.S.2d 18 (Ct. Cl. 1964), the Court held that a provision of the Administrative Code of the City of New York requiring owners of property to abate the public nuisance was not binding on the State of New York, particularly in view of the fact that the thrust of the local legislation was penal.
negligence in failing to comply with the labor law and with
the rules of an administrative agency where a trench under
construction on state-owned property collapsed and killed
the claimant's intestate. The state was also held liable
under Section 51 of the Civil Rights Law, where it had
made unauthorized use of a picture of the claimant in
advertising a ski facility. The Court stated that the waiver
of immunity applied and that the claimant had a civil
action under the statute since the activity of the state
involved a kind of business that also engaged the attention
of private enterprise. The Court held, however, that
Section 50 of the Civil Rights Law, which was penal in
nature, did not apply to the state.100

One of the jurisdictional limits on the Court of Claims
is the lack of power to implead a third-party defendant.
While additional parties claimant may be interpleaded, a
third party who has no claim against the state, but against
whom the claimant may have a cause of action arising from
the same transaction, or who may be primarily liable, can-
not be brought in by the court.101 The reason is twofold:
first, the Court of Claims has jurisdiction solely of claims
against the state, by the state against a claimant, or between
conflicting claimants as the legislature may provide; secondly,
the additional defendant has a constitutional right to a
jury trial in a court of general jurisdiction,102 and there
is no such right afforded by the Court of Claims Act.103
Any attempt to subject persons not properly before it to
the jurisdiction of the Court of Claims would be uncon-

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aff'd, 14 App. Div. 2d 478, 217 N.Y.S.2d 641 (3d Dep't 1961). See also
Janice v. State, 201 Misc. 915, 107 N.Y.S.2d 674 (Ct. Cl. 1951), where
the state was held liable for breach of a nondelegable duty when a building,
in the process of demolition by a contractor in a state-owned public park,
collapsed and killed claimant's intestate.
100 Seidelman v. State, 202 Misc. 817, 110 N.Y.S.2d 380 (Ct. Cl.
1952).
101 Horoch v. State, 286 App. Div. 303, 143 N.Y.S.2d 327 (3d Dep't
1952).
102 N.Y. Const. art. I, § 2; art. VI, § 18.
103 N.Y. Const. art. VI, § 18(b); N.Y. Ct. Cl. Act § 12(3).
stitutional, and, therefore, a claimant having a cause of action against a party jointly liable with the state must sue such party in the supreme court.

Another jurisdictional problem of a similar nature arises in appropriation claims, where there is an apparent lien, encumbrance, dower or other interest which the Court for any reason is unable to determine. Under Section 22 of the New York Court of Claims Act, unless the owners of such interests consent that their respective rights be determined by the Court, it shall order deposit of the award for distribution to the persons entitled to the same as ordered by the supreme court. The Court of Claims may order interpleader of all parties, known or unknown, for a complete determination of the action. This, of course, is to protect the state against further claims arising from the same appropriation. The Court may determine title questions between the state and the claimant, and may decide that where the interests of the parties are undisputed there is no need for a deposit of the award. However, where there is an actual dispute between conflicting interests,

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104 See Horoch v. State, supra note 101. During the court reorganization hearings in the late 1950's, proponents of consolidation of the Court of Claims and the supreme court made considerable point of this jurisdictional difficulty, urging that consolidation would eliminate separate trials in joint tort-feasor cases, "claim over" cases, and other cases where liability of both the state and another party in a claim against the state is involved. See 1957 N.Y. LEG. Doc. No. 88, SECOND ANNUAL REPORT OF THE JUDICIAL CONFERENCE 101. Since there was no intent or serious proposal that the state subject itself to jury trials, consolidation would not be a complete solution. Studies made at the time indicated that the problem was actually a minor one, the importance of which had been greatly exaggerated. A survey of the calendar calls of the Court of Claims for the year 1955 indicated only eleven out of 1,508 cases on the calendar of the Court for that year involved instances where another action was pending in the supreme court on the same set of facts. A survey made of decisions in which awards were made in personal injury and death claims between 1940 and 1955 revealed that out of 599 such claims, there were only twelve instances where a claimant had settled with a joint tort-feasor in the supreme court before trying his case in the Court of Claims.

105 N.Y. Cr. Cl. Act § 9(6).


the Court does not have jurisdiction unless the parties waive their constitutional right to a jury trial.108

In considering the general jurisdiction of the Court of Claims and the problems incident thereto, we have found that although it is couched in rather broad terms, there are certain necessary limitations thereon because of the nature of the sovereign and the guarantees of the constitution. Hence, the Court of Claims plays a prime role not only in determining liability and damages in a specific case, but also in defining the ambit of the state's liability.

**MAJOR CATEGORIES OF CLAIMS**

Having discussed the jurisdiction of the Court of Claims, we shall proceed to consider the work of the Court in relation to the type of claims it ordinarily hears and determines. They fall into three general categories: appropriation, tort, and contract.

**Appropriation Claims**

The State of New York exercises its power of eminent domain administratively. We have already enumerated the several statutes 109 setting forth procedures by which the state may acquire private property through the exercise of such power. The statutes are all quite similar, in that the actual taking of the property is effected by filing a map and a description of the property taken in the local county clerk's office. The claimant is divested of his property, and title passes to the State of New York upon the performance of this act. The owner has the choice of

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108 In Solkat Realty v. State, 174 Misc. 808, 21 N.Y.S.2d 853 (Ct. Cl. 1940), aff'd, 262 App. Div. 944, 29 N.Y.S.2d 622 (4th Dep't 1941), aff'd, 288 N.Y. 547, 42 N.E.2d 13 (1942), the trial court expressed the hope that the appellate division, in reviewing the decision, would answer the question whether the court had any jurisdiction to determine title as between conflicting interests without the consent of the parties concerned and, expressed the belief that it might determine issues of title in disputed ownership of land only by consent of the interested parties. The appellate division did not answer the question proposed by the trial court. See Abraham v. State, 31 Misc. 2d 25, 223 N.Y.S.2d 826 (Ct. Cl. 1962); Moroney v. State, 67 Misc. 58, 124 N.Y. Supp. 824 (Ct. Cl. 1910).

109 See note 58 supra.
agreeing with the state on a price for his property or filing a claim in the Court of Claims. Such claim must be filed within two years after he is served a copy of the map and description with notice of their filing.\textsuperscript{110}

There are more appropriation claims filed than any other type.\textsuperscript{111} This is not surprising in view of the fact that the State of New York has been appropriating all the real property it needs not only for its extensive highway construction program, but also for the needs of several of its public authorities. It is essential that these claims be disposed of as quickly as possible, since they bear interest from the date of taking and excessive delays cost the state large sums in interest payments.\textsuperscript{112} The claimant may also suffer an economic loss if he has to wait for compensation, for he may have to borrow money to replace the appropriated property, and the rate of interest he pays on such borrowing is usually higher than the four per cent rate paid by the state.

To facilitate the prompt disposal of these actions, the Judges of the Court of Claims have undertaken additional assignments, and special terms have been set up in areas where there are backlogs of appropriation claims.\textsuperscript{113} In addition, the Court now exercises stricter calendar control, and has been able to conduct pretrial conferences in all the districts with a view to settling appropriation claims.

Since the Court operates on the state level, and its work is closely connected with that of the Attorney General

\textsuperscript{110} N.Y. Cr. Cl. Act § 10(1).
\textsuperscript{111} In the period July 1, 1964 through June 30, 1965, the Court disposed of 1,996 claims, of which 1,337 were appropriation claims. During the same period, 1,477 claims were filed, of which 884 were appropriation claims. Spokesmen for the Department of Public Works state that approximately eighty per cent of the appropriation claims are settled before a formal claim is filed with the Court of Claims. Thus, the claims filed represent the hard core of appropriation matters which the state's agents have not been able to settle amicably.
\textsuperscript{112} At present, a special committee appointed by the governor is at work reviewing the state's laws and administrative procedures for the taking of real property and compensating owners. The chairman of this committee is a former Presiding Judge of the Court of Claims, and one Judge of the Court of Claims is a member of the committee.
\textsuperscript{113} See \textit{Annual Report of the Court of Claims to the Governor} (1963).
and the Department of Public Works, there is an identity of administrative problems in many areas. As a result of a series of conferences between members of the Court and representatives of such offices, measures have been taken to further facilitate disposal of appropriation matters. One such measure was the installment of a simple procedure for payments by the Comptroller in cases where the Court recommends settlement. Adoption of this procedure has eliminated the time-consuming method of settling matters through formal proof and entry of judgment in such situations.

The New York State Constitution provides: "Private property shall not be taken for public use without just compensation." 114 The function of the Court of Claims in an appropriation matter is to determine the sum of money which will fairly compensate the claimant for the loss of his property. Essential to all appropriation claims is the testimony of an expert appraiser on market value, which is generally the criterion of just compensation.115

It is apparent, however, that in some instances the expert appraiser has become an advocate, and the all-too-prevalent practice of exaggerated appraisals has placed a burden on the Court in the performance of its duty to arrive at a just award for the value of the appropriated property. This practice has caused great concern not only to the Court, but also to the professional appraisal societies, which have been attempting to rectify the situation.116 The

114 N.Y. Const. art. I, §7(a). See also U.S. Const. amend. V, which provides in part "nor shall private property be taken for public use without just compensation. . . ."
116 The Constitution and the statutes do not define the meaning of just compensation. But it has come to be recognized that just compensation is the value of the interest taken. This is not the value to the owner for his particular purposes but a so-called 'market value.' It is recognized that an owner often receives less than the value of the property to him but experience has shown that the rule is reasonably satisfactory." Id. at 377.
116 The American Institute of Appraisers has an appraisal review committee. In a situation where members of the Institute oppose each other in a case, both members must file a report with the Institute indicating what their value was and who opposed them. If there was a very substantial divergence in their values, the local chapter of the Institute investigates and reports. Flagrant violation of the rules of ethics of the society can result in expulsion.
Department of Public Works has also been making an intensive effort to upgrade the quality of the state's appraisals, in an attempt to improve the accuracy of its value testimony.

Of basic importance to any appraisal is the inclusion of compensable items which affect the value of the property and, conversely, the elimination of non-compensable items. There are many factors which a private investor may possibly consider, but which must be excluded from the consideration of the Court in an appropriation matter. For example, the amount of traffic passing the premises, the visibility of the property from a public road, or the convenience of access cannot be considered when the Court is assessing consequential damages, although such factors may have a considerable effect on the market value of the property.

One whose land is appropriated is entitled to receive the greatest value for any available use to which it may

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117 "Again, strict adherence to the criterion of market value may involve inclusion of elements which, though they effect such value, must in fairness be eliminated in a condemnation case, as where the formula is attempted to be applied as between an owner who may not want to part with his land because of its special adaptability to his own use, and a taker who needs the land because of its peculiar fitness for the taker's purposes. These elements must be disregarded by the fact-finding body in arriving at 'fair' market value." United States v. Miller, 317 U.S. 369, 375 (1942).


121 The capitalization of profits is used as a basis of appraisal in many instances for private purposes, but the use of this method is generally limited to rental property in appropriation cases, and then only where there is some valid basis for ascertaining the rental income. See Humble Oil & Ref. Co. v. State, 12 N.Y.2d 861, 187 N.E.2d 791, 237 N.Y.S.2d 338 (1962); Mattydale Shopping Center v. State, 303 N.Y. 974, 106 N.E.2d 59 (1952); Levitin v. State, 12 App. Div. 2d 6, 207 N.Y.S.2d 798 (3d Dep't 1960). Reproduction costs cannot be used as the sole basis for the valuation of improvements where such improvements are not a specialty. Guthmuller v. State, 23 App. Div. 2d 597, 256 N.Y.S.2d 526 (3d Dep't 1965). The effect of the probability of a zoning change may be considered and an increment of value, based upon such probability, may be added to the total appraised value. Masten v. State, 11 App. Div. 2d 370, 206 N.Y.S.2d 672 (3d Dep't 1960), aff'd, 9 N.Y.2d 796, 175 N.E.2d 166, 215 N.Y.S.2d 508 (1961); Valley Stream Lawns v. State, 9 App. Div. 2d 149, 192 N.Y.S.2d 805 (3d Dep't 1959).
be put. "Care must be taken, however, not to substitute for reality the mere hope of the owner that the property might be used for some specific purpose." Although property is valued as of the date of the taking, a potential use may be shown, provided such use is in the realm of feasibility. Thus, the Court may give raw acreage an additional increment of value because of the potentiality of its development as a subdivision, and a plant or factory may be valued as a unit of a going concern.

In an appropriation claim, it is not the duty of the state to furnish the claimant with equivalent facilities or the price thereof, but to pay just compensation for the land taken and the improvements thereon. However, in situations involving only a partial taking, the claimant may be entitled to the expenses incurred in constructing equivalent or alternate facilities so he may continue to fully utilize the remaining property.

The important question of access arises where state road construction has effected a change in grading. In the absence of statutory authority conferring the right to compensation, an abutting owner may not recover for impairment of his right to the easements of light, air and access as the result of such change. If there is an existing statute providing for damages, the state must pay for making a change of grade which would be compensable

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129 See N.Y. SECOND CLASS CITIES LAW § 99; N.Y. VILLAGE LAW § 159.
130 Radcliff's Ex'r's v. Mayor of B'klyn, 4 N.Y. 195 (1850).
if performed by the municipality in which the property is located. Where any part of the claimant's property is used to effectuate a change of grade, consequential damages flowing from such a use are compensable—these damages may include impairment of the right of access. Moreover, an owner may never be deprived of all access to a highway without compensation.

Implicit in these access cases is the idea that there is a definite limit to governmental liability even in appropriation claims. There is no doubt that even though there be no direct taking, many claimants suffer actual loss for which they remain uncompensated. Although the specific basis for the denial of relief may be a lack of statutory authority, or a use of police power, the underlying philosophy of the decisions indicates that the fundamental reason for such a denial is actually the inability of the state to compensate for all possible damages. The opinion in a recent case sets forth the idea succinctly: "The rights of an abutting owner are subordinate to those of the State in the regulation of public highways for the benefit of the public, and any inconvenience must be borne by adjoining landowners." Since the burden placed upon the sovereign in such situations would apparently be too great, the courts have refused to compensate in the absence of a legislative mandate to do so.

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135 Northern Lights Shopping Center v. State, supra note 134, at 419, 247 N.Y.S.2d at 337.

The foregoing situations present but a few of the legal questions raised in the trials of appropriation claims, but they are typical of the complexities involved in determining valuation in eminent domain cases.

Tort Claims

Claims arising out of the negligent construction and maintenance of the state highway system constitute the largest single category of tort actions. In the past few decades, the Court of Claims has applied the rules of common-law negligence to claims based on defective highways and, as a result, a body of law has been established governing the duty of the state with respect to the traveling public. Thus, the usual problem of the Court in highway

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137 Although most of the tort claims brought before the Court are based on negligence, the Court also handles a considerable number of actions based on intentional torts: false arrest, false imprisonment, malicious prosecution, assault, and trespass.

138 The Court has held that highway construction must conform to the engineering standards existing at the time of such construction. See White v. State, 18 Misc. 2d 441, 445, 188 N.Y.S.2d 865, 869 (Ct. Cl. 1959); cf. Barrett v. State, 22 App. Div. 2d 347, 256 N.Y.S.2d 261 (4th Dep't 1965). The state must erect and maintain adequate signs to warn of known dangers. Canepa v. State, 306 N.Y. 272, 117 N.E.2d 550 (1954). The signs should conform to national standards. Ziehm v. State, 270 App. Div. 876, 61 N.Y.S.2d 99 (4th Dep't 1946). The state is usually not liable for highway conditions due to the weather. McCauley v. State, 8 N.Y.2d 938, 168 N.E.2d 843, 204 N.Y.S.2d 174 (1960); La Tournier v. State, 1 Misc. 2d 734, 147 N.Y.S.2d 138 (3d Dep't 1955); Sutherland v. State, 189 Misc. 953, 68 N.Y.S.2d 553 (Ct. Cl. 1947). However, the state is usually liable where there is ice on the road as the result of faulty drainage. When such a dangerous condition exists, it is the duty of the state to correct the condition, if possible and, if not, to place signs warning of the danger or to sand the area. Bono v. State, 1 N.Y.2d 885, 136 N.E.2d 715, 154 N.Y.S.2d 643 (1956). The state may be liable for defective guard rails or for failure to erect guard rails. Falkowski v. State, 26 Misc. 2d 367, 210 N.Y.S.2d 268 (Ct. Cl. 1961), aff'd, 15 App. Div. 2d 717, 223 N.Y.S.2d 833 (3d Dep't 1962); Sanders v. State, 191 Misc. 248, 76 N.Y.S.2d 817 (Ct. Cl. 1947), aff'd, 274 App. Div. 842, 81 N.Y.S.2d 924 (4th Dep't 1948), aff'd, 298 N.Y. 850, 84 N.E.2d 151 (1949). There is no duty to place guard rails where there is no foreseeable hazard. Jacobs v. State, 198 Misc. 405, 98 N.Y.S.2d 891 (Ct. Cl. 1950). The state has been held liable for injuries resulting from the presence of rocks or other debris on the road (Juliano v. State, 190 Misc. 130, 71 N.Y.S.2d
negligence claims is merely the resolution of the facts (which are usually in sharp dispute) and the application of the established principles of law thereto. As in all negligence cases, the contributory negligence of the claimant is considered.

Another fertile source of negligence claims is the operation of custodial institutions for the mentally disturbed and the retarded. The state is under a duty to care for and protect the inmates of its mental institutions from themselves and from each other. The usual cases involve suicide, assault, and escape, and basic to liability in this type of action is notice to the state of the inmate's proclivities. Thus, in the case where a mentally retarded infant, who was a known eloper, escaped from a state school and set fire to a lumber yard, the state was absolved from liability on the ground that such an event was not foreseeable, since the infant had never evinced any tendency toward arson. However, where an escapee from a mental institution, who was known to be dangerous, stabbed the claimant, the state was held liable.

Shoulders of a highway must be maintained in a condition so as to be reasonably safe for use in case of an emergency. See Gruneison v. State, 14 Misc. 2d 373, 179 N.Y.S.2d 682 (Ct. Cl. 1958) and cases cited therein. With respect to objects on the shoulders see Ellis v. State, 16 App. Div. 2d 727, 226 N.Y.S.2d 803 (3d Dep't), aff'd, 12 N.Y.2d 770, 186 N.E.2d 556, 234 N.Y.S.2d 718 (1962); Sweet v. State, 195 Misc. 494, 89 N.Y.S.2d 506 (Ct. Cl. 1949), holding the state not liable for poles properly placed in highway shoulder pursuant to statutory right, and located to avoid unreasonable and unnecessary danger to travelers on the highway.


Weihs v. State, 267 App. Div. 233, 45 N.Y.S.2d 542 (3d Dep't 1943); Finkel v. State, 37 Misc. 2d 757, 237 N.Y.S.2d 66 (Ct. Cl. 1962). The inmates of the state mental hospitals can, and do, suffer injuries in the
The rule that has been enunciated in decisions involving mental hospital claims absolves the state from liability where injury results from an erroneous exercise of medical judgment.\(^\text{142}\) The state has been held liable, however, where actual malpractice, as distinguished from an error in judgment, was the cause of the claimant's injury.\(^\text{143}\)

In an action for the wrongful death of an inmate of a mental institution, the possibility of the inmate's recovery and eventual return to society is an important factor in the assessment of damages. Where there is no possibility of such a recovery, there can be no allowance of damages for death, except for funeral expenses.\(^\text{144}\)

A considerable number of claims arise out of the operation of state prisons. These are usually for injuries suffered by a prisoner working with allegedly defective machines.\(^\text{145}\) The state is obliged to furnish a prisoner with a safe place to work,\(^\text{146}\) and since he has no choice except to do as directed, he cannot be held to assume the risks ordinary course of events at such institutions, and claims are filed as a result thereof. In such situations, the usual rules of negligence apply. Hoyt v. State, 17 Misc. 2d 939, 188 N.Y.S.2d 223 (Ct. Cl. 1959); Reyes v. State, 9 Misc. 2d 808, 170 N.Y.S.2d 633 (Ct. Cl. 1958); McCabe v. State, 190 Misc. 11, 73 N.Y.S.2d 441 (Ct. Cl. 1947), aff'd, 273 App. Div. 1048, 78 N.Y.S.2d 687 (3d Dep't 1948); Lee v. State, 187 Misc. 268, 64 N.Y.S.2d 417 (Ct. Cl. 1946).

\(^{142}\) St. George v. State, 308 N.Y. 681, 124 N.E.2d 320 (1954); Taig v. State, 19 App. Div. 2d 182, 241 N.Y.S.2d 495 (3d Dep't 1963); see also Seavy v. State, 21 App. Div. 2d 445, 250 N.Y.S.2d 877 (4th Dep't 1964), absolving the state from liability where a released retarded infant burned down claimant's barn. Basis of the decision was error in professional judgment in use of the "open door" policy for rehabilitation of the mentally retarded. But see Higgins v. State, 43 Misc. 2d 793, 252 N.Y.S.2d 163 (Ct. Cl. 1964), where the state was held liable for permitting an inmate of a mental hospital to leave the grounds and assault the claimant; Todor v. State, 23 Misc. 2d 933, 203 N.Y.S.2d 985 (Ct. Cl. 1960).


\(^{144}\) Grasso v. State, 289 N.Y. 552, 43 N.E.2d 530 (1942); St. Pierre v. State, 272 App. Div. 973, 71 N.Y.S.2d 608 (3d Dep't 1947). But see Liddle v. State, supra note 139, where an award was made because of the existence of workmen's compensation payments which would be made to next of kin during the lifetime of the deceased inmate.


incident to his assigned job; he can, however, be guilty of contributory negligence. Several claims have involved the question of the applicability of the provisions of the state labor law dealing with protective devices. The Court of Claims has held that, although such provisions may not be binding on the state, they do set a standard for appraising the negligence of the state.

In claims involving state prisons, as in the mental institution cases, the liability of the state is limited to those injuries which might reasonably be foreseen. Thus, where a prisoner escaped from a prison farm and assaulted the claimant's intestate, the state was absolved of liability, since the escapee did not have a record of violence, having been sentenced for committing a robbery with a toy pistol. The Court of Appeals specifically stated that public policy required that the state be held free of liability. It pointed out that to hold otherwise would impose a heavy responsibility on the state and would dissuade prison authorities from continued experimentation with minimum security work details which prepare the better risk prisoner for eventual return to society. Here, the Court placed a limit on the state's liability on the ground that not to do so might seriously interfere with the performance of governmental functions by responsible officials.

The operation and maintenance of the state's system of parks and recreational facilities is another fruitful source of claims. While the state must generally oversee its parks and recreational areas, it is not usually required to furnish

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148 Richards v. State, 205 Misc. 3, 127 N.Y.S.2d 14 (Ct. Cl. 1954). There is a limitation on actions brought by prison inmates. A prisoner cannot file a claim as long as he is confined, since his civil rights are suspended (Green v. State, 278 N.Y. 15, 14 N.E.2d 833 (1938)). However, a parolee (Grant v. State, 192 Misc. 45, 77 N.Y.S.2d 756 (Ct. Cl. 1948)) or an inmate of a reformatory (Foster v. State, 205 Misc. 736, 129 N.Y.S.2d 418 (Ct. Cl. 1954)) may maintain an action.
150 Mobley v. State, 1 App. Div. 2d 731, 147 N.Y.S.2d 414 (3d Dep't 1955). Where one prisoner is assaulted by another, the state is not liable unless it has knowledge that the prisoner committing the assault was so much more dangerous than the others that it was improper to allow him to perform ordinary tasks or mingle with other prisoners.
direct and immediate supervision. For example, failure to enforce park regulations in the absence of notice of a violation does not give rise to liability.

The most significant case arising out of the operation of state parks was Battalla v. State. In that case, an infant was placed in the chair lift at Bellayre Mountain Ski Center by an employee of the state, who neglected to secure the safety bar of the chair. As a result of this negligent act, claimant alleged she was frightened to such an extent that she became hysterical and sustained severe emotional and neurological disturbances with residual physical manifestations. The Court of Claims held that the complaint alleged facts sufficient to constitute a cause of action. In affirming, the Court of Appeals directly overruled prior case law, and rendered a significant change in the law of damages in New York State.

The operation of the barge canal system was at one time a prolific source of claims against the state. However, in recent years, there have been but few claims arising out of this activity. Certain of these claims were based on the use of the canal facilities, and the question usually was whether the injured party had been a trespasser, a licensee, or an invitee. The greatest number of recent canal cases have arisen out of the flooding of adjacent lands through the operation of the canal. These claims usually involve only property damage, but since many owners are ordinarily damaged by one flooding, the practice in claims of this sort is to try a test case which will govern disposition of the remainder of the group.

A considerable number of claims have been filed alleging flood damage due to negligent construction or maintenance

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155 Mitchell v. Rochester Ry., 151 N.Y. 107, 45 N.E. 354 (1896), which denied recovery for mental and physical injuries caused solely by fright.
of bridges, culverts, and other facilities forming part of the state highway system.\textsuperscript{157} The state is not liable in flood claims for damage caused by surface waters flowing from its facilities\textsuperscript{158} unless these waters have been gathered and channelled onto the claimant’s property by artificial means.\textsuperscript{159} Liability may be based on trespass or negligent maintenance and construction,\textsuperscript{160} and the state may also be liable for flood damages under the ordinary obligations of a landowner, although the work is done by an independent contractor.\textsuperscript{161}

Accidents occurring at educational institutions maintained by the state produce a number of claims each year.\textsuperscript{162} Some actions also arise from the operation of vehicles by the officers and employees of various state agencies. In both situations, the usual rules of negligence law control,\textsuperscript{163}


\textsuperscript{158} Gibson v. State, 187 Misc. 931, 64 N.Y.S.2d 632 (Ct. Cl. 1946).


\textsuperscript{160} McCormick v. State, 289 N.Y. 572, 43 N.E.2d 715 (1942); Schlopp v. State, 18 Misc. 2d 485, 190 N.Y.S.2d 96 (Ct. Cl. 1959), aff’d, 12 App. Div. 2d 880, 211 N.Y.S.2d 716 (4th Dep’t), aff’d, 10 N.Y.2d 716, 176 N.E.2d 736, 219 N.Y.S.2d 44 (1961). The state cannot escape liability for the flooding of a claimant’s lands on the ground that work was done in conformity with good engineering practice. The state has no greater rights than an individual under the circumstances.


\textsuperscript{163} Thus, when the state entrusts a vehicle to one of its employees, it is liable to a claimant injured as a result of the negligent operation of the vehicle, whether or not the employee was using the vehicle for state business. Adams v. State, 269 App. Div. 482, 57 N.Y.S.2d 42 (3d Dep’t 1945), rev’d on other grounds, 295 N.Y. 946, 68 N.E.2d 44 (1946). In Burmaster v. State, 7 N.Y.2d 63, 163 N.E.2d 742, 195 N.Y.S.2d 385 (1959), the wife of a state employee went on a state business trip with her husband in a state-owned vehicle to assist in the operation of such vehicle, if
and generally there is little difficulty in the application thereof. There are also a certain number of claims based upon the activities of the state police and the negligent maintenance of state-owned buildings.

In addition to negligence claims, the Court also occasionally hears cases based upon intentional torts: trespass, false arrest, false imprisonment, malicious prosecution, and assault. Claims in trespass usually involve flooding of property, and we have already considered this type of action. The other intentional torts involve the person and liberty of the claimant.

False arrest cases are ordinarily based on acts of the state police, although other departments of the state exercising police power can and do make arrests. When the officer acts under a warrant which is valid on its face, he and the state are protected, unless, of course, he has wrongfully procured the warrant. Most of the claims for false

necessary. She was injured in an accident involving the vehicle. The state was held liable, despite the fact that a directive had been issued prohibiting state vehicles from carrying passengers for non-official purposes. But see Fitzgerald v. State, 46 Misc. 2d 151, 259 N.Y.S.2d 222 (Ct. Cl. 1965), in which the state was absolved of liability where the wife of a state employee was injured while riding in a private car used by said employee on state business. The presence of the employee's wife in the vehicle was wholly unrelated to the purpose of his journey. The basis of the decision was that the state, in granting permission for the use of the private vehicle, could not reasonably foresee that its employee would invite his wife to accompany him, and hence did not assume the risk of any injury to her on the trip.

The state has been held liable where the state police failed to transmit a message cancelling an alarm, and such failure was a proximate cause of the death of the claimant's decedent. Slavin v. State, 249 App. Div. 72, 291 N.Y. Supp. 721 (3d Dep't 1936). Liability was found to exist where the state police negligently used tear gas on an insane person who had barricaded himself in the house, where they had no warrant for arrest or legal right to enter the building. Titcomb v. State, 30 Misc. 2d 902, 222 N.Y.S.2d 596 (Ct. Cl. 1961). Liability may also result from careless operation of motor vehicles by state police. McArdle v. State, 251 App. Div. 773, 295 N.Y. Supp. 648 (3d Dep't, motion for reargument denied, 252 App. Div. 706, 298 N.Y. Supp. 996 (3d Dep't 1937)); Herendeen v. State, 197 Misc. 749, 94 N.Y.S.2d 432 (Ct. Cl. 1949), aff'd, 276 App. Div. 817, 93 N.Y.S.2d 700 (4th Dep't 1949). McArdle involved striking pedestrians, Herendeen a collision. See also Russo v. State, 166 Misc. 316, 2 N.Y.S.2d 350 (Ct. Cl. 1938), where a state police car was involved in a collision while transporting a prisoner, and the state was held liable for his injuries.

arrest grow out of situations where the arrest is made without a warrant. In such instances, the validity of the arrest depends upon probable cause.

Claims for false imprisonment ordinarily are concomitant with claims for false arrest, and the validity of the restraint usually depends upon the legality of the arrest. Occasionally, actions for false imprisonment are based on the commitment of the claimant to a state mental or penal institution. But, where the order of commitment is valid on its face, the state is protected even though the claimant was improperly sentenced by a court.

In malicious prosecution claims, as in those for false arrest and false imprisonment, the issue is one of probable cause for the prosecution, and this is a question of law for the Court.

Assault claims often arise out of the actions of the state police. While a police officer is justified in using force

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166 In the following actions involving false arrest, false imprisonment, and malicious prosecution, the Courts held that the arresting officers were justified in making the arrests: Paul v. State, 40 Misc. 2d 328, 243 N.Y.S.2d 104 (Ct. Cl. 1963) (arrest by state police—claimant possessed coin slot machine); Ranke v. State, 206 Misc. 569, 134 N.Y.S.2d 83 (Ct. Cl. 1954), aff'd, 285 App. Div. 1113, 141 N.Y.S.2d 516 (4th Dep't 1955) (arrest by state police—claimant failed to have driver time cards in his possession as required by N.Y. LAB. LAW § 167). In the following instances, the Court found that the arrest was not justified: Pawloski v. State, 45 Misc. 2d 933, 258 N.Y.S.2d 60 (Ct. Cl. 1965) (arrest by state police for violation of N.Y. PEN. LAW § 2034, entry on or detaining lands by force—the state failed to prove acts of the claimants took place on state lands); Snyder v. State, 38 Misc. 2d 488, 236 N.Y.S.2d 355 (Ct. Cl. 1963), modified on other grounds, 20 App. Div. 2d 827, 247 N.Y.S.2d 757 (3d Dep't 1964) (arrest by state police for holding more than one driver's license at a time—the claimant actually had a New York and a Massachusetts driver's license. In this case, the appellate court left open the question as to whether punitive damages could be awarded against the state).


170 However, some assaults do occur in state custodial institutions: Rauppius v. State, 15 Misc. 2d 384, 180 N.Y.S.2d 805 (Ct. Cl. 1958) (excessive force used on an inmate of a state hospital by an attendant); Gerbino v. State, 201 Misc. 3, 109 N.Y.S.2d 862, (Ct. Cl. 1952) (assault by attendant on mental defective in state school).
to effectuate an arrest, or to repel physical attack, where such force is excessive or unjustified, an assault results. The rights to liberty and personal security are held in high esteem, and in instances where the state police or any other state agency violates these rights, the wronged citizen should have redress. By virtue of its waiver of immunity, the State of New York has provided a means by which the citizen can obtain satisfaction in such cases and, at the same time, has afforded protection to itself from unjustified claims based on groundless accusations.

The foregoing tort cases are indicative of the scope and variety of the actions brought in the Court of Claims. The cases cited, while surely not exhaustive, do provide some idea of the work of the Court in this field. While the state conducts many activities which have no comparable private counterpart, the Court of Claims, over the years, has been able to adapt the ordinary rules of law governing tort actions between individuals to situations involving the State of New York. In very few instances has the Court limited the liability of the state for fear that any further extension thereof would cast an impossible financial burden upon the state treasury, or would needlessly hamper responsible state officials in the performance of their statutory duties.

**Contract Claims**

The number of contract actions filed in the Court of Claims is small in comparison to those based on tort and appropriation. Some few contract claims may involve such matters as the rental of buildings, the purchase of

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171 Phillips v. State, 30 Misc. 2d 912, 222 N.Y.S.2d 633 (Ct. Cl. 1961), where the Court found that a trooper, in attempting to break up a fight, was attacked and struck the claimant in self-defense.

172 Lippert v. State, 207 Misc. 632, 139 N.Y.S.2d 751 (Ct. Cl. 1955). The state, of course, is responsible only when its agent is acting within the scope of his authority. See Nisbett v. State, 31 Misc. 2d 32, 222 N.Y.S.2d 867 (Ct. Cl. 1961), where the state was absolved from liability for an unjustifiable assault on the claimant by an off-duty state trooper out of uniform; Day v. State, 162 Misc. 39, 293 N.Y. Supp. 528 (Ct. Cl. 1937).

materials, or the authority of an agent to bind the state contractually. However, the usual claim of this nature arises out of a contract for the construction of a highway or a building. These claims are complex, and ordinarily include multiple causes of action. Large sums are often involved, and the trial, therefore, can be quite time consuming.

The State of New York utilizes a unilateral type of contract in its construction programs. Since this is a very different type of contract from that usually negotiated between individuals, the work of the Court in this field is particularly specialized. State contracts contain numerous exculpatory clauses which, if strictly construed, might well deny relief in most cases. The Court has, therefore, interpreted these contracts liberally in an attempt to accomplish substantial justice. The language of Judge Earl in Danolds v. State is particularly expressive of the Court’s approach:

The sovereign can contract and has very many occasions to do so; it can build canals and public buildings, and engage in public works, and in carrying forward its projects it makes use of the instrumentalities which individuals use for the same purposes. It must be governed by the same rules of common honesty and justice which bind individuals.

In the course of time, the Court of Claims has established a body of case law which is based upon principles which would be applicable if both contracting parties were private persons. However, in the final analysis,

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179 Atlanta Constr. Co. v. State, supra note 177.
any decision in this area must depend to a marked degree on the peculiar circumstances presented. This is especially true of construction contract claims which are usually factually complicated, and demand a certain degree of judicial expertise for a cogent determination of the issues.

CONTRIBUTION TO SUBSTANTIVE LAW

Decisions in Court of Claims matters have, over the years, made major contributions to the general substantive law of the state in several important areas. Most of the case law relating to eminent domain, to the construction and maintenance of highways, and to the operation of custodial institutions has been formulated in the Court of Claims. The enlightened decision in Battalla v. State had far-reaching results, and brought about a much-needed change in the existing law with respect to recovery for injuries resulting solely from fright.

Another recent and significant decision of the Court of Claims was Williams v. State. In that case a claim was filed on behalf of a mother and an infant. The infant's cause of action was predicated on the state's failure to

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181 Supra note 177.

182 46 Misc. 2d 824, 260 N.Y.S.2d 953 (Ct. Cl. 1965).
provide adequate care and supervision which resulted in the infant being conceived and born out of wedlock to a mentally deficient mother. Although no precedent existed for such a cause of action, the Court did not hesitate to strike out on a new path in the interests of justice. It was determined that the infant plaintiff had indeed alleged the breach of a duty owed to her mother and herself, and was entitled to a trial of the issues.

**Operation of the Court**

*Practice*

The practice in the Court of Claims is controlled by the New York Court of Claims Act and the Rules of the Court of Claims, and, where the Act and Rules are silent, by the CPLR.\(^{183}\) With some exceptions, the practice is similar in many ways to that in the supreme court. One exception is the short statute of limitations for the filing of claims;\(^{184}\) another is the lack of a summons.

An action is commenced by the filing of an original copy of a claim in the office of the Clerk of the Court in Albany, either in person or by mail. A copy of the claim must also be served upon the Attorney General.\(^{185}\) The

\(^{183}\) N.Y. Ct. Cl. Act § 9(9).

\(^{184}\) N.Y. Ct. Cl. Act § 10(9). Claims for damage resulting to property not acquired in appropriation matters must be filed within six months of the acceptance of the work by the state. See Cimo v. State, 282 App. Div. 317, 122 N.Y.S.2d 751 (4th Dep't), aff'd, 306 N.Y. 143, 116 N.E.2d 290 (1953). As a result of the short period for filing claims, particularly tort claims, the Court hears a great number of motions for permission to file a claim after the time for doing so has elapsed. N.Y. Ct. Cl. Act § 10(5).

\(^{185}\) N.Y. Ct. Cl. Act § 11; N.Y. Ct. Cl. R. 9. An additional twelve copies of the claim are required to be filed within ten days of the time of filing. N.Y. Ct. Cl. R. 11. Service on the Attorney General may be waived if he has been served by the Clerk of the Court within the filing time. N.Y. Ct. Cl. Act § 11. In certain cases, particularly where property is taken for the use of an authority, a copy of the claim should be served on the authority. N.Y. Pub. Auth. Law § 358(2). Filing of a notice of intention to file a claim (N.Y. Ct. Cl. Act § 10; N.Y. Ct. Cl. R. 11) serves only to extend the time to file a claim for tort or contract to two years from the date of accrual. The filing of such a notice is not a condition precedent to the filing of a claim. The notice should set forth the same matters as a claim, except the amount demanded. The original and one copy are filed either in person or by mail in the Clerk's office at Albany, New York, and a copy is served on the Attorney General (N.Y. Ct. Cl. Act...
claim itself should be a simple, verified statement of the facts upon which it is based. Since all allegations are deemed denied, the state is not required to file an answer, but it may serve a counterclaim, to which a reply is necessary. The pleadings may be amended by an order of the Court.

Pretrial examination may be had by the state upon five days notice, and by the claimant upon motion, if, in the discretion of the Court, there is a showing that the testimony of any official or employee of the state is material and necessary to prepare for trial. The remedy of disclosure is also available in the Court of Claims by order of the Court.

Upon filing, a claim is placed on the calendar of the district in which it arose (for purposes of trial, the state is divided into nine districts). The date of issue is the date of filing, and there is no requirement for the filing of a separate note of issue or a certificate of readiness.


N.Y. Ct. Cl. Rules 14, 15.

N.Y. Ct. Cl. R. 16.

N.Y. Ct. Cl. Act § 17(1), (2).

CPLR 3102(f); DiSanto v. State, 41 Misc. 2d 601, 245 N.Y.S.2d 234 (Ct. Cl. 1963), aff'd, 22 App. Div. 2d 289, 254 N.Y.S.2d 965 (3d Dep't 1964). As yet there has been no adjudication as to whether N.Y. Ct. Cl. Act § 17 has been superseded by CPLR 3102. Some question has been raised on this. See Weinstein, Korn & Miller, New York Civil Practice ¶ 3102.29, 3123.07, where the conflict between CPLR 3102(f) and N.Y. Ct. Cl. Act § 17 has been noted. The remedy (repeal of both statutes) suggested by the writers is quite drastic, and may result in the elimination of disclosure from Court of Claims practice. See Schmiedel v. State, 14 App. Div. 2d 33, 217 N.Y.S.2d 110 (4th Dep't 1961). The Court has granted disclosure. See Peters v. State, 41 Misc. 2d 980, 247 N.Y.S.2d 811 (Ct. Cl. 1964), aff'd, 22 App. Div. 2d 764, 253 N.Y.S.2d 260 (3d Dep't 1964), where it was held that the claimant might obtain admissions on order. The Court will grant disclosure when the interest of justice requires it, as it has granted motions for examinations before trial and discovery when authorized. Moreover, the appellate courts have advised utilization of this procedure. See Wolfe v. State, 23 App. Div. 2d 136, 259 N.Y.S.2d 13 (3d Dep't 1965). To date, although there is an apparent statutory conflict, little practical difficulty has been experienced by the Court.

N.Y. Ct. Cl. R. 5.
Copies of a printed calendar, prepared for each district by the Clerk of the Court, are mailed to each party at least seven days before the opening of the term. This constitutes a notice of trial. A calendar call is conducted at the opening of the term in each district, and ready claims are tried in the order in which they appear on the calendar. Claims may be dismissed for failure to prosecute, but restoration for good cause shown lies in the discretion of the Court.

Pretrial conferences are conducted by the Court in appropriation matters. The pretrial conference calendar of appropriation claims is prepared upon the calendar call in each district.

The trial of a claim is conducted by a Court of Claims Judge in the same manner as a nonjury trial in the supreme court. Unless there is a nonsuit, a decision is rendered by the Judge after trial, stating the essential facts upon

192 N.Y. Ct. Cl. R. 3.
193 N.Y. Ct. Cl. R. 7; N.Y. Ct. Cl. Act § 19(3).
194 N.Y. Ct. Cl. R. 5a.
195 N.Y. Ct. Cl. Act § 12(3). The Presiding Judge may order a claim heard or determined by more than one Judge, but not more than three. Two must concur in the decision. Motions are heard by one Judge. In appropriations claims where the amount of the award is in excess of $5,000, the Court must view the property. N.Y. Ct. Cl. Act § 12(4). Comparable sales are admissible in evidence on direct examination in the trial of an appropriation claim. A list of the sales used, with pertinent data, must be served on the opposing party twenty days before trial, N.Y. Ct. Cl. Act § 16(1). Evidence of assessed valuation is also admissible in appropriation cases, N.Y. Ct. Cl. Act § 16(2). When exhibits are admitted in evidence upon the trial, each party is responsible for his own exhibits, but they are filed in the Clerk's office at the direction of the Clerk only when the Court requires them. However, each party is required to submit a list of all exhibits submitted by him to the Court and to file the same with the Clerk within five days after a claim is submitted. N.Y. Cr. Cl. R. 27. Stenographic transcripts of testimony are available from the Court Reporter upon payment of his statutory fee. N.Y. Ct. Cl. Act § 5(3). At the opening of trial it is customary to show proof of jurisdiction by placing in evidence the letters received from the Clerk of the Court and the Attorney General, acknowledging receipt of claim and notice of intention, if one was filed. The claimant also testifies to the non-assignment of his claim. In appropriation claims, the date of appropriation, the date of personal service of a map and description on the claimant, as well as the date of filing of the claim, should be placed on record, for such dates control interest allowance. The date of entry may also be required if entry was made before title passed to the state.
which it is based. Claims may be submitted to the Court upon an agreed statement of facts, or the parties may submit requests for findings of fact. Opportunity is also afforded for the filing of briefs, if necessary. Judgment is entered upon the decision of the Court, and the technical rules surrounding this process are set forth in Section 20 of the New York Court of Claims Act.

Appeals to the appellate division are taken in the same manner as appeals from judgments of the supreme court. Appeals in matters originating in the first, second or third department are taken to the third department; those arising in the fourth department are taken to that department. Appeals may be taken from the appellate division to the Court of Appeals in the same manner as any other appeal to that Court. In some instances, appeal may lie directly to the Court of Appeals from the Court of Claims.

The Court of Claims has all the powers incidental to carrying out its jurisdiction. It may order consolidation of claims or trials, and it may interplead parties and perpetuate testimony. The Court has jurisdiction to open defaults and to vacate or amend any process, claim, order or judgment, in furtherance of justice for any error in form or substance. It may establish rules for governing the Court and for regulating practice and procedure, and it may provide for regular or special terms at such places as it may determine. The Court may fix attorneys' fees.

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196 CPLR 4213(b). Decision may be written or oral. In less complex claims, the Court at times gives the decision from the bench at the conclusion of the trial, or shortly thereafter, reserving to the parties the right to submit findings within a reasonable time. CPLR 4213(a).

197 N.Y. Cr. Cl. R. 18.

198 CPLR 4213(a); N.Y. Cr. Cl. R. 26.

199 N.Y. Cr. Cl. R. 26.

200 Appeals are covered by N.Y. Cr. Cl. Act § 24. N.Y. Cr. Cl. R. 29 provides that practice on appeal shall be the same as in the supreme court and the Court of Appeals. N.Y. Cr. Cl. R. 30 requires the successful party to file the original printed case, with a certified copy of the Order of Remittitur, within ten days after the filing of the order with the appellate division.


202 N.Y. Cr. Cl. Act § 9(5)-(11).
fees, grant leave to sue as a poor person, appoint a guardian ad litem for an infant, and perform many other acts incidental to its primary power to render money judgments against the State of New York.

Administration

Since the Court performs an important state function, involving other agencies of the sovereign, it is necessary that its administration be located at the seat of the state government in Albany. Centralized administration offers the following advantages: flexibility in meeting case loads through the arrangement of special terms in areas where claims are numerous; co-ordination with the Attorney General and other state departments, so that terms and trials may be scheduled to cope with staff limitations and with the availability of state officers and employees as witnesses; uniform rules of practice applicable to all claims against the state in all localities; consistency in Court decisions and damage awards, and a resulting reduction in the number of appeals which would arise from inconsistent decisions.

203 Application of Sullivan, 3 Misc. 2d 719, 156 N.Y.S.2d 189 (Ct. Cl. 1956), and cases cited therein.
204 Lipschultz v. State, 192 Misc. 70, 78 N.Y.S.2d 731 (Ct. Cl. 1948).
205 N.Y. Cr. Cl. R. 22. It has been held that the guardian ad litem in a claim against the state should be appointed by the Court of Claims rather than the supreme court. Hawley v. State, 28 Misc. 2d 150, 217 N.Y.S.2d 107 (Ct. Cl. 1961).
206 The Presiding Judge makes the assignment of the Judges, and the Court sets up the terms, determining the length of the terms and number of parts. Two terms are held each year in each district.
207 The Department of Public Works is involved in approximately eighty per cent of the claims in the Court of Claims. In the usual claims arising out of accidents in state custodial institutions, a great number of witnesses called by both parties are state employees.
208 Decisions of the Court are filed in the office of the Clerk who processes them, serves the parties and circulates such decisions among the Judges of the Court for guidance and future reference. All the facilities of the Clerk's office, as well as the records and transcripts of all adjudicated claims, are available to members of the Court and their staffs for research purposes. The Judges meet several times in the course of the year to discuss the work of the Court and matters of mutual interest. These arrangements tend to coordinate the decisions of the Court. This makes for uniformity and serves as a guide to the attorney for the potential claimant and to the Attorney General and the various officers of the state departments with respect to the law governing claims against the state.
Although it is centralized for these policy considerations, the Court is local for purposes of trial. Claims are tried in the general locality in which they arise, a considerable convenience for claimants, attorneys and witnesses which does not place too great a burden upon the office of the Attorney General, which must defend in all matters. In addition, the Court has its own facilities and courtrooms in all districts except two, and, during the course of the Court term, the calendar is handled locally.

A trial in the Court of Claims has always been a non-jury proceeding. This practice has worked exceedingly well, and has never been subject to criticism. In fact, those who advocate elimination of jury trials in civil proceedings often point to the Court of Claims as an excellent example of the nonjury civil court.

As we have indicated, much of the practice before the Court of Claims is of a specialized nature, and the Judges become quite expert in the type of cases they hear and determine. The experience of the Court is extremely important, for it expedites both trial and decision, reduces the number of appeals, and results in far more efficient operation.

CONCLUSION

The present Court of Claims is a product of many years of development. It has evolved from a quasi-judicial auditing board to a constitutional court. Its existence and development testify to the state's recognition that, in the exercise of substantial justice, a citizen who is wronged by the sovereign should have the legal right to redress unless compensation would impose unreasonable duties and burdens upon the state. The Court of Claims has acted efficiently as the arbiter between the state and the individual, dispensing justice by granting satisfaction to the wronged citizen on one hand, and protecting the state from groundless claims on the other.

In carrying out its primary purpose, to hear and determine actions by citizens against the state, the Court of Claims has had to adapt general rules of law, applicable
to actions between individuals, to actions between individuals and the state, and to establish, at least in the first instance, the limitations of the liability of the state. In the accomplishment of its judicial function, the Court of Claims has created a substantial body of case law which constitutes a major lasting contribution to the law of the State of New York.

But the most important contribution the Court of Claims has made to the judicial system and the people of the State of New York has been its efficient performance of the difficult and delicate task of rendering justice in litigation between citizen and sovereign. It has been aptly called the conscience of the state.